IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-07-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.Nos.683 and 863 of 2004

1.L.Murugan
2.Madhesh ..Petitioners in Crl.R.C.No.683/2004 /A1 and A2

Jaganathan .. Petitioner in Crl.R.C.No.863/2004/A3

-vs-

State by
The Inspector of Police
Magudanchavadi Police Station,
Mugudanchavadi, Salem District
(crime No.693/1994) .. Respondent in both revisions

These revisions are filed against the Judgment in C.A.No.100 of 2003 dated 9.2.2004 on the file of the learned Additional District and Sessions Judge(Fast Track Court NO.2) Salem confirming the Judgment in S.C.No.80 of 2003 dated 18.7.2003 on the file of the learned Assistant Sessions Judge, Sankari.

For Petitioners in Crl.R.C.No.683/2004 : Mr.K.V.Sridharan
For petitioner in Crl.R.C.No.863/2004 : Mr.B.Vasudevan
For respondent in both revisions : Mr.V.R.Balasubramaniam, Additional Public Prosecutor

WEB COPY

C O M M O N O R D E R

Crl.R.C.No.683 of 2004 has been preferred by A1 and A2 and Crl.R.C.No.863 of 2004 has been preferred by A3 in S.C.No.80 of 2003 on the file of the Assistant Sessions Judge, Sankari, Salem.

https://hcservices.ecourts.gov.in/hcservices/

2. The short facts of the prosecution case sans irrelevant particulars are that on 21.7.1994 at about 5.00p.m., when the victim girl"A" aged 14, while retuning from Upparapattiyar , after parking her cycle near a tea shop was proceeding to her house via., Ayyathurai Kuttichikattu both A1 and A2 wrongfully restrained and caught hold of her committed the offence of rape and A3 had gagged the victim in order to facilitate A1 and A2 to commit the crime. A1 and A2 were charged under Sections 341 and 376 of IPC and A3 was charged under Sections 341,323, and 376 r/w 511 of IPC. The charge sheet was filed before the learned Judicial Magistrate No.2, Sankagiri who had issued summons to the accused and on their appearance furnished copies under Section 207 of Cr.P.C.and since the case is exclusively triable by the Court of Sessions, who had committed under Section 209 of Cr.P.C.. On appearance of the accused, the learned Sessions Judge framed charges as indicated above against the accused and when questioned, the accused pleaded not guilty.

3. On the side of the Prosecution , P.Ws 1 to 10 were examined. Exs P1 to P17 were exhibited and M.Os 1 to 7 were marked.

4. P.W.1 is the victim girl"A". According to her, the occurrence took place while she was studying in IX Standard at Elampillai Government Girls Higher Secondary School and that on 21.7.1994, her father had left for Sankipuram to see her(P.W.1's) sister and in order to facilitate him to go to the village, she had left her bicycle at the tea shop at Upparapattiyar village near Chiththarkoil and was returning to her house at about 4.30p.m, while she was proceeding through Ayyanthuraikutchikattu, A1 and A2 wrongfully restrained and caught hold of her A1 had torn her inskirt and outraged her modesty and committed the offence of rape. Thereafter, A2 also committed the same offence on her and A3 was guarding both A1 and A2 at the time of occurrence and had also closed her mouth and also beat her with hands on her back and cheek and that she raised the distress call which attracted her mother who was grazing the cattle nearby and on seeing her mother, all the three accused ranaway from the place of occurrence and when her mother enquired about the incident she explained to her about the commission of the offence committed by the accused and her mother took her on her shoulder to her house. She would further depose that at 7.00p.m on the same day, the accused came to her house and criminally intimidated her with dire consequences and that her father did not turn up on the occurrence day but returned only on the following day at about 11.00p.m. and on the next day of her father's arrival, a complaint was preferred by her under Ex P1` with the police and that she was referred to the Government Hospital, Salem. He has handed over M.O.1 torn inskirt, M.O.2 torn jacket and M.O.3 torn Gown she was wearing at the time of occurrence.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4a. P.W.2 is the mother of P.W.1 According to her, while she was grazing her cattle near the place of occurrence on 21.7.1994 at about 5.00p.m., her daughter "A" who was returning after leaving the bicycle near a tea shop , she heard the distress call from her daughter"A' immediately she rushed to the place of occurrence and her daughter"A" had narrated what had happened to her and specifically her daughter has stated that A1 and A2 have raped her and that A3 had closed her mouth and that she took P.W.1 to her house and that the accused came in the night and criminally intimated them, if they prefer any complaint against them, they have to meet the dire consequences. Since her husband was out of station, she could not prefer any complaint on the same night and her husband returned to the house only on the following day at 11.00p.m., and hence the complaint was preferred on the following day after her husband's arrival.

4b. P.W.3 is the father of P.W.1 According to him , he left for Sinkipuram on 21.7.1994 to see his elder daughter and that he returned only on 22.7.1994 at about 11.00p.m and that both P.W1 and P.W.2 had narrated the incident and that a complaint was preferred on 23.7.1994 by her daughter P.W.1.

4c. P.W.7 is the Sub Inspector of Police who had registered the case under Magudanchavadi Police Station Crime No.693 of 1993 on the basis of Ex P1 complaint preferred by P.W.1. Ex P8 is copy of the First Information report. He had visited the place of occurrence and prepared Ex P2 observation mahazar in the presence of P.W.4. He had also drawn a rough sketch Ex P9 in the presence of witnesses. He has examined the witnesses and recorded their statements and he had sent the material objects seized by him to the Court under Ex P10 Form 95. He has arrested A1 and A2 on 24.7.1994 at about 9.00a.m., and had seized their wearing apparels M.O.4 to M.O.7 and sent to the Court under Ex P10 form 95. According to him, A3 had surrendered before him, was arrested by him and that the accused were produced before the Judicial Magistratre , Sankari for remand and that he had sent Ex P11 letter of requisition requesting the Court to subject A1 and A2 for medical examination

4d. P.W.10 is the doctor who had examined A1` and A2 and issued Exs P16 and P17 certificates respectively stating that both A1 and A2 are potent. The victim girl P.W.1 was examined by P.W.5 the doctor Maharani on 25.7.1994 at about 10.00p.m., and that according to her, the victim girl P.W.1 had informed that she (P.W.1) was raped by two known persons on 21.7.1994 at about 5.30p.m., and that she had not noticed any external injuries on the victim girl but found her hymen was ruptured and that smear was taken and sent for chemical examination. Ex P3 is the copy of the accident register and Ex P4 is the final opinion.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4e. P.W.6 is the doctor who had examined both A1 and A2 for the injuries, they have sustained and issued Ex P5 and Ex P6 copy of the accident register respectively. He has also examined P.W.1 on the same date at about 11.15a.m and that she had informed him that she was way laid and raped by known persons and that he referred her to be examined by a lady doctor. Ex P7 is the copy of the accident register relating to P.W.1.

4f.P.W.9 is the then head clerk of Judicial Magistrate's Court, Sankagiri. On the basis of Ex P12 letter of requisition received from the Investigation Officer , he had sent the material objects connected with this case to the forensic science laboratory for chemical examination through Ex P13 letter of requisition. Ex P14 is the analyst's report . Ex P15 is the serologist's report.

4g.P.W.8 is the successor of P.W.7 who after completing the formalities had filed the charge sheet against A1 to A3.

5. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, they would deny their complicity with the crime. The accused have examined a teacher in Elampillai Government Higher Secondary School through whom Ex D1 admission register and ExD2 Attendance Register relating to P.W.1 were marked.

6. After going through the materials available on record before the trial Court by the prosecution including the oral and documentary evidence, the learned trial Judge has come to a conclusion that the offence under Sections 341 and 376 of IPC have been proved beyond any reasonable doubt against A1 and A2 and accordingly convicted and sentenced them to undergo one month rigorous imprisonment under Section 341 of IPC each and seven years rigorous imprisonment each under Section 376 of IPC and slapped a fine of Rs.3000/- each with default sentence. The learned trial Judge has also convicted A3 under Section 323 of IPC to undergo one month rigorous imprisonment and convicted A3 under Section 376 r/w 511 of IPC to undergo seven years rigorous imprisonment and levied a fine of Rs.3000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused have preferred an appeal in C.A.No.100 of 2003 on the file of the Additional Sessions Judge(Fast Track Court No.2) Salem. The learned Sessions Judge also concurred with the findings of the learned trial Judge after scanning the evidence and after hearing both sides which necessitated A1 and A2 to prefer Crl.R.C.No.683 of 2004 and A3 to prefer CrlR.C. No.863 of 2004 before this Court.

7. Now the point for determination in these revisions is that the findings of the learned Sessions Judge in C.A.No.100 of 2003 on the file of the learned Additional District and Sessions Judge

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(Fast Track Court NO.2) Salem is liable to be set aside for the reasons stated in the memorandum of revisions in Crl.R.C.Nos.683 and 863 of 2004 ?

8. Heard Mr. K.V.Sridharan, learned counsel appearing for the revision petitioners in Crl.R.C.No.683 of 2004 and Mr.B.Vasudevan, learned counsel appearing for the revision petitioner in Crl.R.C.No.863 of 2004 and Mr.V.R.Balasubramaniam, the learned Additional Public Prosecutor for the State and considered their respective submissions.

9. The Point:

The learned counsel appearing for the revision petitioners in Crl.R.C.No.683 of 2004 would contend that both the Courts below have failed to note the inordinate delay in preferring the complaint Ex P1. According to the prosecution case, the occurrence had happened on 21.7.1994 at 5.p.m., but the complaint was preferred only on 23.7.1994 at 3.15p.m., and there was no acceptable reasons forthcoming from the side of the prosecution for this in ordinate delay. But both P.W.1 and P.W.2 have deposed in their evidence that P.W.2's husband who is out of station on the date of occurrence had returned only on 22.7.1994 at about 11.00p.m., and they have further deposed in their evidence that even on the date of occurrence at 7.00p.m.,the accused came there and criminally intimidated them with a dire consequences if they preferred complaint against them. It is natural that under such circumstances, under fear, both P.W.1 and P.W.2 womenfolk could not prefer any complaint without any assistance of a male member. Only after the arrival of the husband of P.W.2, they have decided to prefer a complaint on the next day ie., on 23.7.1994 through P.W.1. Under such circumstances the delay in this case cannot be taken as an inordinate delay to vitiate the entire case of the prosecution as rightly held by the Courts below.

10. The learned counsel appearing for the revision petitioners in Crl.R.C.No.683 of 2004 would focus the attention of this Court to the evidence of P.W.5, the doctor who had examined the victim girl"A" on 25.7.1994 had not noticed any external injuries on the person of the victim girl P.W.1 According to the learned senior counsel, the case of the prosecution that there was sexual assault on the victim by the accused cannot be sustainable on the evidence of P.W.5, the doctor who had deposed that there was no external injury found on the person of the victim. The learned senior counsel would further contend that since there was no resistance of the victim, it cannot be said that the accused have forcibly had sexual intercourse with her. But the learned Additional Public Prosecutor would bring to the notice of this Court that at the time of the occurrence, the age of the victim girl was only 14 and she

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

was a minor and as per Section 375 of IPC 'Sixthly' if the victim girl is below the age of 16 years then to constitute an offence her consent with or without is not necessary. P.W.5 the doctor has stated that on her examination, she could find the hymen of the victim girl ruptured. So the evidence of P.W.1 coupled with the evidence of P.W.5 the doctor would clearly go to show that A1 and A2 have committed the offence of rape on her(P.W.1).

11. A vain attempt by way of defence was made before the trial Court by the accused is that the offence was committed by one Rajalingam and that the occurrence has been published in the newspaper also. But to substantiate this defence, the accused have not produced any defence witness or produced the newspaper in which the said news was said to have been published. But the charge against A1 and A2 has been proved by substantial evidence by the prosecution to warrant conviction under Sections 341 and 376 of IPC as rightly observed by the Courts below.

12.The learned counsel appearing for A3/revision petitioner in Crl.R.C.No.863 of 2004 would contend that absolutely there is no evidence has been made out against A3 even according to P.W.1, A3 had closed her mouth at the time of occurrence but before the Doctor P.W.5 the victim girl had informed that only two persons have committed the offence of rape on 21.7.1994. Further no confession statement has been recorded by the police from A3. If A3 would have closed the mouth of the victim girl at the time of occurrence with force, some injury would have been seen on the mouth of the victim girl. But according to P.W.5 there is no external injury found on the body of P.W.1.Under such circumstances I am of the view that the charge levelled against A3 has not made out to warrant conviction against A3.

13. Now coming to the question of sentence, the learned counsel appearing for the revision petitioners(Crl.R.C.No.683/2004) relying on a decision reported in Rajkumar alias Raju Yadhv Alias Rajkumar Yadav-v-State of Bihar(2006(3) Supreme Court Cases(cri) 112) contended that admittedly there is a delay in preferring the first information report in this case and also as per the evidence of P.W.5, the Doctor the victim girl is subject herself to the same nature of offence previously also. The exact observation in the above said dictum runs as follows:

> "Keeping in view the fact that there was a delay of three days in lodging the FIR and the fact that the Doctor (P.W.6), who examined the victim, in her testimony has deposed that she did not find any confirmatory evidence of rape on the victim, in the peculiar facts and circumstances of the present case, we deem it

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

appropriate to reduce the sentence awarded to the appellant to the period already undergone."

Under such circumstances,I am of the view that the abovesaid dictum will squarely apply to the present facts of the case also. The learned counsel would represent that A1 to A3 are in jail from 18.7.2003 and that they have completed four years in jail as on date. The learned Additional Public Prosecutor would admit that if sufficient reasons are given in the Judgment, the minimum sentence of seven years can be reduced. So for the reasons indicated above, I am of the view that in this case also, A1 and A2 can be awarded lessor sentence of period already undergone.

14. In fine, Crl.R.C.No. 863 of 2004(preferred by A3) is allowed and conviction and sentence awarded by the learned Sessions Judge in C.A.No.100 of 2003 on the file of the Additional District and Sessions Judge (fast Track Court No.2) Salem is hereby set aside and A3 is set at liberty forthwith, if he is not required in any other case. The fine amount, if any paid by A3 shall be refunded to him. The bail bond of A3 shall stand cancelled. Crl.R.C.No.683 of 2004 is dismissed confirming the conviction of the learned Sessions Judge in C.A.No.100 of 2003 on the file of the Additional District and Sessions Judge(Fast Track Court No.2) Salem against A1 and A2, but the sentence alone is modified to that of the period already undergone against A1 and A2. The fine amount paid by A1 and A2 will sustain.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional District and Sessions Judge/FTC NO.2,salem.

2. The Principal District and Sessions Judge, Salem.

3. The Assistant Sessions Judge, Sankari, Salem.

4. The Principal Sessions Judge, Salem.

5. The Public Prosecutor, High Court, Madras

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. The Superintendent of Central Prison, Coimbatore(A1 and A2)

7. The Inspector of Police, Magudavanchavadi Police Station Magudanchavadi , Salem.

8. The Superintendent of Central Prison, Salem(A3)

+ 1 cc to Mr. K. V. Sridharan, Advocate, SR No.44679

+ 1 cc to Mr. B. Vasudevan, Advocate, SR No.44227

NSM(CO)
SR/25.7.2007

Crl.R.C.Nos.683 & 863/2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/